Supreme Court, U.S.
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No.

IN THE

# Supreme Court of the United States

IN RE: PAUL R. JONES,

*Petitioner*

ON PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

## PETITION FOR WRIT OF MANDAMUS

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## QUESTION PRESENTED

Can Ninth Circuit's voluminous casework load justify abrogating Petitioner Jones' Fifth Amendment Due Process provisions for a speedy determination?

## PARTIES TO THE PROCEEDING

The Petitioner is Paul R. Jones, Pro Se Petitioner. The Respondents are Salt River Pima-Maricopa Indian Community, Eric Vimmerstedt, Sharon Carl, Janet Lacapa, Michael LaLonde and Bryan Meyers.

## CORPORATE DISCLOSURE STATEMENT

None

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## STATEMENT OF JURISDICTION

1. **The date the judgment or order sought to be reviewed was entered (and, if applicable, a statement that the petition is filed under this Court's Rule 11). There is no judgment or order available from the Ninth Circuit.**

2. **The date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for an extraordinary writ. There is no order available from the Ninth Circuit.**

3. **Express reliance on Rule 12.5.... None**

4. **The Statutory provision believed to confer on this Court jurisdiction to review on an extraordinary writ the judgment or order in question.**

   (1) Statement for the jurisdiction of The United States Supreme Court is 28 U.S.C. #1651(a), and Article III, Section 2 of the United States Constitution to protect the Constitution from infringement by stealth.

   (2) The Ninth Circuit Court of Appeals is an inferior court to The United States Supreme Court. Petitioner alleges the Ninth Circuit is hostile to his case because he is a (A). Pro Se Petitioner and (B). He is challenging the Constitutionality of Title 25 U.S.C. and its progeny as being an invidious racial classification discrimination enactment that subordinate the Constitution to a tribal community which the Ninth Circuit is unwilling to address.

(3) Petitioner cannot provide a copy of rulings or orders from the Ninth Circuit which is the center of his dispute as the Circuit has not rendered any ruling or orders. Nor has the Ninth Circuit calendared his case. This is the reason Petitioner believes there exists an exceptional circumstance that warrants the exercise of The Supreme Court's discretionary powers for the execution of an extraordinary writ from the Supreme Court. The Ninth Circuit Administrative personnel informed Petitioner by telephone it could take up to 18 months to calendar his case. This is in addition to the 2+ months delay while the Ninth ostensibly searched for his 2 'misplaced' submissions that were critical to the disposition of his case. Execution of this extraordinary writ will aid the Court's appellate jurisdiction by causing a calendaring and ruling from the Ninth Circuit to be forthcoming in timely manner and avoid the Constitutional questions of (1) whether the Ninth Circuit's workload justifies abrogating Petitioner's 1st, 5th , and 9th Amendment rights and (2) whether the Ninth's pattern of inaction is to avoid addressing the underlying question of whether Title 25 U.S.C. and its progeny are invidious racial classification discrimination enactments that subordinates the Constitution to a tribal community. Petitioner's effort to seek adequate relief from the Chief Judge of the Ninth Circuit has been met with hostile silence. Petitioner has no other avenue or form or any other court to seek vindication of his conceded Constitutional rights except The Supreme Court of the United States.

5. **If applicable, a statement that the notifications required by Rule 29.4(b) or (c) have been made.**
**None**

Petitioner respectfully petitions for an extraordinary writ to secure a ruling from the 9th Circuit in pending case No. 04-15569 (9th CIR.2004).

## OPINIONS BELOW

None

## TREATIES

None

## STATUTORY PROVISIONS INVOLVED

1. 28 U.S.C. #1651(a): The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

2. Article III, Section 2: The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

3. Article VI: Oath of Office: Judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution.

## CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS ENTERED IN THE CASE.

None

## STATEMENT OF THE CASE

Petitioner alleges that the 9th Circuit US Court of Appeals is hostile to the case of the Petitioner for redress of his claim against the tribal community and individual respondents who terminated his employment without due process and who now seek to shield themselves from Petitioner's judicial review of their actions through alleged claims of absolute tribal sovereignty preventing federal court review of their actions.

The graveman of Petitioner's claim is that the U.S. Constitution applies in full force to Tribal communities and their actions must comply with all provisions of the U.S. Constitution which are accorded to all citizens whether tribal members or not. (James A. Poore, *The Constitution of the U.S. Applies to Indian Tribes* (1998) 59 Montana L. Rev. 51.) Petitioner contends that 25 U.S. et seq constitute an invidious racial classification discrimination that subordinate the Constitution to a tribal community which the 9th Circuit is not willing to consider nor order the lower Federal District Court to hold hearings upon the issues such as the impact of *The Indian Citizenship Act of 1924* to ascertain the validity of the Petitioner's claimed injustice towards him in the Tribal action of employment termination.

## II

Petitioner alleges that his 1st, 5th and 9th Amendment rights under the U.S. Constitution are being infringed as a result of the 9th Circuits inaction on his Emergency Petition to expedite calendaring of his case for appellate review.

Petitioner had submitted to the 9th Circuit his Emergency Petition (Attachment #1) which was received on November 15, 2004 by that Court as indicated on the Certified Return Receipt attached herein. (Attachment #2) In the Emergency Petition, Petitioner sought immediate calendaring by the Court to consider relief from the Federal District Courts decision on whether or not the alleged mailing of the Appellee's Motion to Dismiss to the Appellant [Petitioner herein] via a 37 cent U.S. postage stamp satisfies Petitioner's due process rights to adequate notice under the 5th Amendment of the U.S. Constitution consistent with the rulings in (1950) *Mullane v. Central Hanover Bank & Trust 339 U.S. 306.* The 9th Circuit has not ruled nor acted in any other fashion on the Emergency Petition as of this date. More than 90 days have elapsed since the submission and delay is prejudicial to the Petitioner's overall case.

**III**

Petitioner alleges that the 9th Circuit's administrative practices discriminate against due process to a speedy determination of appeals lodged with the Circuit Court.

As described in the *Wall Street Journal* Tuesday, November 23, 2004, *Letters to the Editor-Take Our Ninth Circuit Court-Please!* (Attachment #3) written by U.S. Judges for the Ninth Circuit, Diarmuid F. O'Scannlain and Richard C. Tallman, Portland, Oregon will unduly delay a determination on the Emergency Petition. By informal information, Petitioner was advised that it will take at least 18 months for his matter to be heard by the 9th Circuit. Such a delay is intolerable and denies due process.

## IV

Authorities in Support of the Petitioner's Request of Issuance of an extraordinary Writ:

1. "Constitutional rights may not be denied simply because of hostility to their assertion and exercise: Vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them." *Watson v. Memphis, 375 U.S. 526. (1963)* (Specific rights in a work environment are: First, Fifth, and Ninth Amendments to be free from race and age discrimination, free from harassment and defamation and free from retaliation for seeking protection of Petitioner's Constitutional protections in a federal court established in accordance with Article III, section 2 and Article IV, section 4 of the Constitution)

2. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 436, 491. (1966)

3. "History is clear that the first ten amendments to the Constitution were adopted to Secure certain common law rights of the people, against invasion by the Federal Government." *Bell v. Hood, 71 F.Supp., 813, 816 (1947) U.S.D.C. -- So. Dist. CA.*

4. "Constitutional provisions for the security of person and property should be liberally construed. It is the duty of the courts to be watchful of constitutional rights against any stealthy encroachments thereon." *Boyd v. U.S., 116 U.S. 635. (1886*

5. "Economic necessity cannot justify a disregard of cardinal constitutional guarantee." *Riley v. Certer, 165 Okal. 262; 25 P.2d 666; 79 ALR 1018.*

## REASONS FOR GRANTING THE WRIT

## I. SUMMARY OF THE ARGUMENT

This petition should be granted to avoid a Constitutional crises of (1) whether Ninth Circuit Court of Appeal's voluminous case workload is justification for abrogating Petitioners 1st, 5th and 9th Amendment protections to seek a speedy determination of his appeal lodged with the Circuit Court and (2) is the Ninth avoiding addressing the underlying question of whether Title 25 U.S.C. and its progeny is/are invidious racial classification discrimination enactment(s) that subordinate the Constitution to a tribal community. The Ninth Circuit's inaction to Petitioner's Emergency Petition to the Chief Judge for the Ninth Circuit Court of Appeal aggravated by the Circuit Court's less than forthcoming efforts to locate two separate documents sent with postal proof of delivery that were critical to his appeal but were twice 'misplaced' by the Ninth's Administration supports Petitioner's allegations of hostility by the Circuit Court towards his appeal. The Ninth Circuit's three judges were quick to deny Petitioner's Motion for Injunctive Relief against the Defendant's counsel and his requests for waiver of page count and his Motion to Strike to be viewed as a Motion and not a Reply Brief. However, when his appeal was ready for calendaring, he was told via telephone by Mr. Westbrook the calendaring machinery could take up to 18 months to work. The 18 month time line was confirmed by Ms. Flowers.

Justice delayed is justice denied. The Ninth Circuit is suppose to rule on whether a 37-cent postage stamped en-

velop allegedly mailed by the Defendant's counsel without benefit of certified mail/return receipt reply or registered mail/return receipt reply or process server to the Petitioner containing their Motion to Dismiss, which the Petitioner states he did not receive, satisfies Petitioner's 5th Amendment Due Process protection to receive adequate notice in accordance with *Mullane v. Central Hanover Bank & Trust,* 339 U.S. 306 (1950). Petitioner believes waiting up to 18 months for the Ninth Circuit to calendar his appeal is outrageous and tramples his rights to a speedy determination on his appeal.

## II. THIS WRIT IS WARRANTED BECAUSE THE NINTH CIRCUIT COURT OF APPEALS HAS FAILED TO CARRY OUT ITS MANDATE TO ADJUDICATE APPEALS BEFORE IT IN A TIMELY MANNER AND IN THE PROCESS OF FAILING TO CARRY OUT THIS MANDATE HAS EXHIBITED HOSTILITY TOWARDS THE PETITIONER'S EFFORTS TO PROTECT HIS 1ST, 5TH AND 9TH AMENDMENT RIGHTS.

Petitioner argues the following citations succinctly support his position that the Ninth Circuit has failed in its Constitutional mandate to render decisions in a timely manner:

> a. "Constitutional rights may not be denied simply because of hostility to their assertion and exercise: Vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny them that to afford them." *Watson v. Memphis,* 375 U.S. 526 (1963)

b. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona,* 384 U.S. 436, 491 (1966)

c. "Economic necessity cannot justify a disregard of cardinal constitutional guarantee." *Riley v. Certer,* 165 Okla. 262; 25 P.2d 666; 79 ALR 1018.n

## CONCLUSION

For the foregoing reasons, the petition for an extraordinary writ in accordance with 28 U.S.C. #1651(a) should be granted.

Respectfully submitted,

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## APPENDIX A – ATTACHMENT #1

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ATTACHMENT # 1

U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT

Paul R. Jones
Pro Se Appellant/Petitioner

CASE NO. 04-15569

Vs.

Emergency Petition to the
Chief Judge for the Ninth
Circuit Court of Appeals

Salt River Pima-Maricopa Indian
Community, Eric Vimmerstedt, Sharon
Carl, Janet Lacapa, Michael LaLonde,
Bryan Meyers, et al
Appellee/Respondent

## INTRODUCTION

Pro Se Appellant Jones is submitting this emergency petition to the Chief Judge of the Ninth Circuit Court of Appeals to assist in gaining the immediate calendaring of the above case. Appellant Jones is greatly troubled and fearful that his

persistent efforts to solve the mystery of what happened to his 'missing' Replacement Reply Briefs and letter to requesting his case be immediately calendared are being met by the Ninth Circuit's Administration with hostility, excluding Ms. Flowers, because Appellant Jones is Pro Se and his case raises serious far reaching Constitutional questions regarding Title 25 U.S.C. and it progeny.

## HISTORY

Appellant Jones encountered the following impediments within the Ninth Circuit Court of Appeals in pursuit of his efforts in the following manner (all submissions and correspondence this Appellant had with the Court was done via certified mail return receipt request):

1. Court informed Appellant his Motion to Strike Brief exceeding the page limits for a Reply Brief of 20 with his submission of 23 pages. Appellant was told by Mr. Hom that he could affirm via letter his Brief which the Court interpreted to be a Reply Brief was not a Reply Brief but a Motion to Strike selected portions of Appellee's text in their Reply Brief and to request the Court to waive the page count issue. This was done but both requests were denied by the Court and the Court told Appellant he needed to submit a Reply Brief and not a Motion that is 20 pages or less. And, the Court directed the Appellant not to submit any additional Motions or raise any other issues arguing the Appellee's submissions without permission from the Court. The Court also denied Appellant's Motion for Injunctive Relief against the Appellee's for repeated impugning the Appellant's name and character in their submissions. All three Appellant re

quests/Motions were denied within 90 days from start to finish. Appellant assumes all three denials were issued over the signatures of at least two of the three judges assigned to his case and not by Administrative personnel. If this was not the case, Appellant requests information to be provided to him as to how the denials to his Motion and requests were determined and by whom.

2. Court notified Appellant that he could submit a Replacement Reply Brief to conform to the page count of 20 pages. The Appellant submitted an 18 page Replacement Reply Brief in compliance with the Court's directives in a timely manner.

3. Court notified Appellant his submission of 1 original and 4 copies of his Replacement Reply Brief was short 11 copes as 1 original and 15 copies were required. This number of copies required was a departure from previous submissions of 1 original and 4 copies he had been submitting to the Court in accordance with the directives given to him by Mr. Rubin.

4. Appellant complied with this requirement by submitting the additional 11 copies of the Replacement Reply Brief on or about August 29, 2004 via certified mail return receipt requested.

5. By late September, 2004, Appellant had not received his Return Receipt Reply for the submission of the 11 additional copies of his Brief nor had the package been returned. He called the Court. Appellant was informed by Mr. Rubin that the 11 additional Briefs had not been received nor had anything been posted to the case file. Appellant informed Mr.

Rubin the documents had been sent by certified mail with a return receipt. Nevertheless, Mr. Rubin could not account for the whereabouts of these documents and there was no posting of receipt to the case file. Mr. Rubin said I could send a letter to the Court and enclose copies of the certified mailing and post office documentation showing that in fact, all copies had been received by the Court. Mr. Rubin also said the Appellant could request the Court not to calendar his case pending affirmation the required number of Replacement Reply Brief's would be available for the Court's review and in the absence of locating the "missing' 11 additional Brief for the Court to duplicate at their expense the additional briefs so as to save time and cost to the Appellant. This, the Appellant did on or about 23 September 2004 via certified mail return receipt requested.

6. On or about 1 October 2004, Appellant called the Court and spoke once again with Mr. Rubin regarding the status of the 'missing' 11 additional Briefs. Appellant informed Mr. Rubin that the return reply receipt from his 23 September letter had been received. Mr. Rubin informed the Appellant that no reference to the letter had been posted to his case computer file and therefore, the Appellant's Replacement Reply Brief issue was unchanged as well as the fact the case had not been calendared. Mr. Rubin informed the Appellant he could duplicate his efforts and send 11 more copies even though these Briefs were optional to his case. Mr. Rubin informed the Appellant he could call the department that calendars case at 415-556-9760. This was done and the case had not been calendared. That department, in turn, referred

the Appellant to the Brief clerk at 415-566-9730. That clerk was confused as to why Appellant was calling.

7. On 4 October, Appellant spoke with Ms. Sylvia McAlister (sp) regarding the status of the 'missing' 11 additional Briefs. Appellant repeated the fact the post office had proof of delivery on the 11 additional copies as well as the delivery of the September letter. Nevertheless, Ms. McAlister said nothing had been posted to computer case file nor had the case been calendared. Ms. McAllister offered no explanation why both of these certified mailings could not be accounted for by the Court and reiterated that the 11 additional copies would have to be sent if the Appellant wanted to have such included in his case presented to the judges.

8. On 4 October 2004, Appellant called the Court's Chief Administration Officer, Ms. Jennifer Flowers. Appellant informed Ms. Flowers the history of his efforts to comply with the Court's directives and his unhappiness with the status of his 11 additional Briefs and how both the letter and Briefs were being handled, or the lack thereof, by the Court. Appellant stated to Ms. Flowers that to have his case calendared absent his Replacement Reply Brief would be construed by the Appellant as denial of his Fifth Amendments rights to be heard. And, this whole debacle and delay was being further aggravated when viewed in the light the 'missing' documents and letter sent by certified mail with return receipts lay at the feet of the Court. Ms. Flowers took Appellant's telephone number and said she would investigate the issues at hand.

9. After several hours passed on 4 October, Ms. Flowers called the Appellant to say she could not locate the 11 additional copies but did find the letter. Another several hours passed and Ms. Flowers called again to say she located the 'missing' 11 additional copies found in the in-box of Mr. Hom who was handling Appellant's case. According to Ms. Flowers, Mr. Hom had been on vacation and the paperwork on the case 'sat' un-attended apparently since September 1 or 2, 2004 when the 11 additional copies were received at the Court. Ms. Flowers said the case was now ready for calendaring and she apologized for the Court as a result of the debacle in handling Appellant's submission as well as his efforts to reconcile the situation despite the lack of effort to assist him by the Court personnel until he raised the issue to Administrative management in the person of Ms. Flowers. Appellant thanked her.

10. On 1 November 2004, Appellant called the Court to determine whether his case had been calendared. He was informed by Mr. Westbrook that it had not and there were no time lines in the computer when the calendaring would take place. When pressed by Appellant to give a more definitive answer as to when the calendaring would take place, Mr. Westbrook said it could be 18-months.

11. Again, on 1 November 2004, Appellant spoke with Ms. Flowers regarding the lack of definitive dates for calendaring his case. Ms. Flowers affirmed what Mr. Westbrook had said-no dated and no time lines and the calendaring could take 18-months to be done. Ms. Flowers said she would investigate further on this issue and would call Appellant back. Several hours passed when Ms. Flowers called and informed

the Appellant there was no change to what he had already been told-it could be 18-months before the case could be calendared. Appellant expressed his unhappiness with the prospects that his case could 'drag on' for such a time. Conside ring the Court had already contributed to the delay as a result of poor internal processing procedures in handling certified mail containing documents critical to a Pro Se Appellant's case, Appellant construes this calendaring issue to be yet another outrageous trenching of his Constitutional rights that he experienced at the hands of his tribal employer ...an employer that is a non-Republican form of government whose conduct subordinates the Constitution to that of a tribal community and, in turn, disabled the Appellants Constitutional rights.

12. Appellant asked Ms. Flowers what his options were to pursue his objections re. outrageous length of time to schedule his case. Ms. Flowers informed the Appellant he had basically 3 options: 1. Wait 18-months for the calendaring 2. File a Motion with the Court to Expedite 3. File an Emergency Writ of Mandamus to Show Cause Why the Case could not be immediately calendared. Appellant Jones elected to ask for assistance from the Chief Judge. This concludes the history.

## CONCLUSION

Appellant respectfully requests the assistance of the Chief Judge for the Ninth Circuit Court of Appeals in immediately calendaring his case. Appellant Jones believes the Court's resolution of his appeal that centers on a 37-cent postage stamp should not take 18-months to decide. For each week of delay, this Appellant's ability to find work is aggravated the more and the need to further delay calendaring 18-months is wrong.

Dated this 12th day of November, 2004.

_____

Paul R. Jones, Appellant, Pro Se

Original and fifteen copies
Filed with the Clerk of
This Court this 12th Day of
November 2004, by certified mail #7003-3110-0006-0770-7510

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And

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## APPENDIX B – ATTACHMENT #2

## (ATTACHMENT #2 NOT REPRODUCABLE)

U.S. Postal Service Certified Mail Receipt No. 7003-3110-0006-0770-7150

## APPENDIX C – ATTACHMENT #3

ATTACHMENT #3

### LETTERS TO THE EDITOR
### TAKE OUR NINTH CIRCUIT COURT –PLEASE!

Congress has a strategic opportunity to do what it has been discussing since long before we were appointed circuit judges by Presidents Reagan and Clinton: reorganize the Ninth Circuit. Compared with the other federal appellate courts, the Ninth Circuit Court of Appeals employs more than twice the average number of judges, handles almost triple the average number of appeals, and is fast approaching three times the average population served.

Last month the House passed and sent to the Senate a bill to restructure this goliath into three: a Mountain Circuit comprised of Arizona, Nevada, Montana and Idaho; a Pacific Northwest Circuit of Oregon, Washington and Alaska; and a new Ninth Circuit of California and Hawaii, which, as reduced, would still be the largest circuit in the country in population, caseload and judges. Nevertheless, in a Nov. 10 Rule of Law commentary ("Don't Split the Ninth Circuit!"), two of our colleagues, Judges Alex Kozinski and Sidney R .Thomas, spied skull-duggery afoot. Congressional progress, they say, was "by stealth and procedural manipulation." House passage last month, they say, was a "surprise move before the Nov. 2 election." And the purpose of the split,

they say, was for the "increased convenience of a few judges."

Contrary to our colleagues' challenge, this largest federal judicial circuit in the nation has been the subject of lengthy and repeated hearings in the current as well as prior sessions, congressionally mandated study commissions, white papers and even passage in certain sessions by one body of Congress or the other; now is the time for Senate to act. A substantial number of circuit and district judges support the legislation. More importantly, in statements to the White Commission, four justices of the Supreme Court have advocated restructuring as well. In any event, Congress ordains the creation and structure of federal courts; judges don't get to do that under the Constitution.

By any measure, the circuit is too big to handle its caseload efficiently. This point is underscored by its consistent ranking at the bottom of all federal appeals courts in the length of time it takes to process appeals. More importantly, size adversely affects not only the speed with which justice is administered, but also the quality of judicial decision-making. Consistent interpretations of the law by an appellate court requires a reasonably small body of judges who have the opportunity to sit and to confer together frequently, and who can read, critique and, when necessary, correct each others' decisions. That kind of collegiality is no longer possible in a circuit of this size.

The 47 judges who hear and decide Ninth Circuit cases sit on three-judge panels together so infrequently that judges often go for years without sitting with each of the judges

with whom they serve. We also deliberate without the benefit of a thorough command of the developing law of our own circuit. An estimated 14,000 appeals are expected to be docketed this year, and it is simply impossible for even the most diligent judge to read critically his or her colleague's dispositions while simultaneously resolving one's own assigned cases.

Smaller circuits would allow us to correct more of our mistakes. The Ninth has grown to such a size that it cannot perform the en banc (or full court) review process that is an important error-reviewing function for every other court of appeals. Even the roughly two dozen cases that are reheard each year are not subject to a true en banc process. The Ninth Circuit is simply too big to rehear an erroneous three-judge panel decision as a full court. Instead, we are the only circuit to sit on "limited" eleven-judge en banc panels drawn by lot, so that a "majority" consists of six judges who may actually represent the minority view of the full court. It is unacceptable in a democracy that a mere six judges could potentially override the views of the other twenty-two active judges.

**Diarmuid F. O'Scannlain**
**Richard C. Tallman**
*U.S. Judges for the Ninth Circuit*
*Portland, Ore.*